

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Request by Auspion Inc.)	ET Docket No. 19-83
For Waiver of Section 18.107(c))	
of the Commission's Rules)	
)	

REPLY COMMENTS OF ENERGOUS CORPORATION

Energous Corporation (“Energous”) submits these reply comments in the proceeding of the Federal Communications Commission (“Commission”) addressing the waiver request (“Waiver Request”) filed by Auspion Inc. (“Auspion”).¹ In its Waiver Request, Auspion seeks a waiver of Sections 2.1 and 18.107(c) of the Commission’s rules.² Specifically, in connection with its wireless power transfer at-a-distance (“WPT AAD”) device, Auspion requests the Commission to waive the portions of the definitions of Part 18 Industrial, Scientific, and Medical (“ISM”) applications and equipment that mandate that ISM applications and equipment be “designed to generate and use locally RF energy.”³

¹ Request for Waiver filed by Auspion Inc., ET Docket No. 19-83 (filed Jan. 3, 2019) (“Waiver Request”); *see also Office of Engineering and Technology Seeks Comment on Auspion USA, Inc. Request for Waiver of ISM “Local Use” Requirement in Parts 2 and 18 for a 24 GHz Wireless Power Transfer Device Over Distance*, Public Notice, DA 19-211, ET Docket No. 19-83 (OET rel. Mar. 26, 2019).

² 47 C.F.R. §§ 2.1, 18.107(c).

³ 47 C.F.R. § 18.107(c).

As more fully explained herein, no such waiver should be required. The Commission has not adopted a rule or legally binding precedent interpreting the scope of the Part 18 ISM definitional phrase “designed to generate and use locally RF energy.” Rather than establishing precedent in this proceeding that a protracted waiver process generally will be required to certify WPT AAD devices, the Commission should determine that all WPT AAD products satisfy the Part 18 ISM definition and then should address any concerns about individual devices on a case-by-case basis as part of the certification process. If the Commission instead requires Auspion to obtain a waiver, any waiver granted by the Commission should be narrowly tailored to Auspion’s specific Waiver Request to avoid foreclosing future flexibility for OET and the WPT AAD industry.

I. ENERGOUS CORPORATION

Energous is an award-winning,⁴ global leader in next-generation RF-based wireless charging technology.⁵ Founded in 2012 and headquartered in San Jose, California, Energous became a publicly traded company in March 2014 (NASDAQ: WATT) and currently has a market capitalization of over \$150 million. It has more than 60 employees, has 215 patents

⁴ See, e.g., Press Release, Frost & Sullivan, *Energous Receives Frost & Sullivan’s North American Company of the Year Award for its WattUp® Wireless Charging Technology* (Apr. 10, 2018), <https://www.prnewswire.com/in/news-releases/energous-receives-frost--sullivans-north-american-company-of-the-year-award-for-its-wattup-wireless-charging-technology-679243453.html>; Press Release, Energous, *WattUp Wireless Charging Technology from Energous Corporation Receives 2017 GOLD Edison Award* (Apr. 21, 2017), <https://www.energous.com/blog/wattup-wireless-charging-technology-from-energous-corporation-receives-2017-gold-edison-award/>; Press Release, Energous, *Energous Receives Five Awards at 2015 Consumer Electronics Show* (Jan. 12, 2015), <https://www.energous.com/blog/energous-receives-five-awards-at-2015-consumer-electronics-show/>.

⁵ See *About Energous – Leading the Next Generation of Wireless Charging*, ENERGOUS, <https://www.energous.com/company/about-energous/> (last visited May 10, 2019); *Leadership – Meet the Management Team*, ENERGOUS, <https://www.energous.com/company/leadership/> (last visited May 10, 2019) (providing bios for Energous’ leadership).

issued or allowed to date, and has over 110 patents pending. In addition to securing the very first Part 18 WPT AAD equipment authorization from the Commission,⁶ Energous has also received international regulatory approval for its wireless power transfer technology and is now approved to ship in 111 countries worldwide.⁷

II. THERE IS NO RULE THAT NEEDS TO BE WAIVED FOR THE COMMISSION TO ACT ON AN EQUIPMENT AUTHORIZATION APPLICATION FOR AUSPION'S TECHNOLOGY

Energous agrees with the commenters in this proceeding that no waiver should be required for Auspion to obtain a certification for its device.⁸ The FCC has not issued any legally binding guidance regarding the meaning of the phrase “generate and use locally” in the ISM definitions. Thus, at this stage, there is no rule that is required to be waived.⁹ Although Energous

⁶ See Grant of Equipment Authorization Issued Under the Authority of the Federal Communications Commission by UL Verification Services Inc., FCC Identifier 2ADNG-MS300 (issued Dec. 26, 2017); Press Release, Energous, *Energous Receives Industry-First FCC Certification for Over-the-Air, Power-at-a-Distance Wireless Charging* (Dec. 26, 2017), <https://ir.energous.com/press-releases/detail/596/energous-receives-industry-first-fcc-certification-for>.

⁷ Press Release, Energous, *Energous Reaches Milestone as it Secures Regulatory Approval for its WattUp Wireless Charging Technology in 100 Countries Worldwide* (Sept. 5, 2018), <https://ir.energous.com/press-releases/detail/619/energous-reaches-milestone-as-it-secures-regulatory>.

⁸ See Comments of MetaPower, LLC, ET Docket No. 19-83 at 1 (filed Apr. 25, 2019) (“MetaPower Comments”) (“MetaPower submits ... that the public interest would best be served if the Commission were to *clarify* that WPT AAD devices, including Auspion’s device, are appropriately classified as Part 18 ISM devices, rather than grant a waiver – because a waiver is not necessary.”); Comments of Nikola Labs, ET Docket 19-83 at 2 (filed Apr. 25, 2019) (“Nikola Comments”) (“If OET agrees that Auspion’s WiPod system will not undermine the policies that OET intends to further under the Local Use Clause, then OET should issue a conditioned certification for the WiPod system, rather than granting Auspion a waiver.”).

⁹ See MetaPower Comments at 3 (“*Although the Commission has not defined ‘generate and use locally,’ that language, on its face, appears to contemplate the classification of WPT AAD technology as Part 18 ISM devices for use cases within a reasonable proximity.*”) (emphasis added); Nikola Comments at 4 (“The Commission has not published any guidance regarding the proper application of the Local Use Clause.”); Waiver Request at i (“[T]he Commission has not

acknowledges that the Office of Engineering and Technology (“OET”) unofficially has focused on the distance between a transmitter and receiver when interpreting this ISM definition,¹⁰ nothing in the definition or in Commission precedent requires it to do so. There are other ways that the “local use” phrase could be interpreted. For example, instead of creating a standard based entirely on distance, the FCC could hold that this definitional phrase is satisfied when a WPT AAD system focuses energy towards a receiver.

The Commission should use this opportunity to clarify that WPT AAD products are properly classified as ISM devices.¹¹ It should not adopt an exclusive interpretation of the “generate and use locally” ISM definitional phrase in its decision on the Auspion Waiver Request. Doing so would deprive the Commission of flexibility when evaluating future WPT AAD equipment authorization applications. It also would foreclose the WPT AAD industry’s ability to bring new and innovative products to market in a timely manner by requiring individual waivers to be filed for many future WPT AAD applications. Because waiver requests typically take months to process, U.S. WPT AAD companies will be at a disadvantage relative to their international competitors, and the U.S. market may lag behind other markets in the commercialization of WPT AAD technology.¹² For these reasons, until the FCC adopts a binding

officially examined when a technology that transfers power over distance constitutes ‘local’ use or how these technologies could fit into the Commission’s regulatory scheme.”).

¹⁰ See MetaPower Comments at 2-3; Nikola Comments at 4-5; Waiver Request at i.

¹¹ See MetaPower Comments at 3 (“MetaPower submits ... that the public interest would best be served if the Commission were to *clarify* that WPT AAD devices, including Auspion’s devices, ‘generate and use locally RF energy’ and thus, are appropriately classified as Part 18 ISM devices.”).

¹² See MetaPower Comments at 4-5 (“A requirement for each iteration of an industrial WPT AAD device to obtain a one-off waiver would create unnecessary delay in the introduction of new products, and an undue burden on applicants and Commission staff.”); Nikola Comments at 6 (“On a global scale, such delay also can cost the United States its leadership position in a new

interpretation of the ISM definition in a rulemaking, OET should continue to address WPT AAD equipment authorization applications on a case-by-case basis using OET's constructive and pragmatic pre-approval guidance and Knowledge Database processes.¹³

III. IF THE COMMISSION GRANTS THE WAIVER REQUEST, THE GRANT SHOULD BE NARROWLY CRAFTED

If the Commission ultimately determines that Auspion requires a waiver, the Commission should narrowly tailor its decision to the facts presented in the Waiver Request.¹⁴ It should not adopt a more expansive interpretation of the ISM requirements in this proceeding than is required to address the Waiver Request.¹⁵ For example, there is no reason in this proceeding to address consumer ISM devices at all or to establish, for the first time in this proceeding, a maximum distance between a transmitter and receiver that is permissible absent a waiver. Instead, to grant Auspion's Waiver Request, the Commission merely needs to determine that the distance proposed by Auspion (i.e., 3-5 meters) requires a waiver in an industrial setting under the specific circumstances presented by Auspion, including its proposed power level and frequency band. The Commission should refrain from taking a position regarding whether a

technology by enabling non-U.S. technologies and standards to capture the international market while U.S. competitors are awaiting regulatory approvals.”).

¹³ See MetaPower Comments at 4 (“Future requests for equipment authorization of industrial WPT AAD devices pursuant to the Part 18 ISM rules should be handled through the well-established Knowledge Database ... process supervised by the Commission’s Office of Engineering and Technology.”); Nikola Comments at 5 (“[I]n a circumstance such as this where there has been no published interpretation of a potential equipment authorization standard, OET should continue to utilize its PAG procedures to evaluate wireless power transfer devices such as the WiPod system on a case-by-case basis.”).

¹⁴ See Nikola Comments at 8 (“OET should clearly and unambiguously state the exact Local Use Clause technical standard that it is waiving, and this standard should be as narrow as possible while still accomplishing OET’s public policy objectives.”).

¹⁵ See Nikola Comments at 6 (“[R]elying on conditioned certifications to interpret the Local Use Clause will avoid the adoption of an overly restrictive *de facto* compliance standard through a single waiver decision.”).

waiver is required at other distances, in connection with other WPT AAD technologies, or under circumstances, including proposed waiver conditions, other than those set forth in the Waiver Request.

IV. CONCLUSION

Energous does not believe the operation proposed by Auspion is in conflict with the “generate and use locally” definitional phrase in Parts 2 and 18 of the Commission’s rules, and thus no waiver should be required. The Commission should address the equipment certification of Auspion’s device based on the specific characteristics of the Auspion device and condition any grant of the Waiver Request as appropriate for Auspion’s technology. In doing so, the Commission should not make judgements or publish precedents that would impact the ability of other WPT AAD devices or technologies to be certified for operation under Part 18. If the Commission finds that a waiver is necessary for Auspion’s technology, the Commission should avoid taking action on the Waiver Request that would complicate the ability of Energous and other industry participants to certify WPT AAD equipment in the future, whether that equipment is similar to, or substantially different from, that of Auspion.

Respectfully,

ENERGOUS CORPORATION

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